

LEE YOKE CHYE

v.

TOH THEAM HOCK & CO.

SUPREME COURT, KUALA LUMPUR

LEE HUN HOE CJ (BORNEO)

GEORGE SEAH SCJ

SYED AGIL BARAKBAH SCJ

[CIVIL APPEAL NO. 120 OF 1984]

9 AUGUST 1986

LAND LAW: *Agreement for sale and purchase - National Land Code 1965, s. 5 - Definition of an issue document of title - Torrens system - Whether an issue document of title can be held as stakeholder.*

CIVIL PROCEDURE: *Interpleader - When available to a person holding an issue document of title.*

AGENCY: *Distinction between an agent and a stakeholder.*

The appellant had retained the respondent, a firm of advocates and solicitors, to act for her in the purchase of a parcel of land. An issue document of title to the land was subsequently caused to be issued in the name of the appellant and delivered to the respondent.

The appellant subsequently sold the land and demanded the return of the issue document of title from the respondent but the respondent failed to comply with the demand. The reason for the refusal to comply with the demand was that the appellant's duly constituted attorney had entered into several sale and purchase agreements disposing of portions of the land. The respondent accordingly took out an Interpleader Summons requiring the several purchasers to appear and state the nature and particulars of their respective claims.

The purchasers put up their respective claims relying in particular on a clause of the sale and purchase agreements which provided for the relevant title of the land to be kept in the custody of the respondent who shall be the stakeholders thereof.

The High Court dismissed an application by the appellant seeking an order of the Court to require the respondent to deliver up the issue document of title to the appellant's solicitors. The appellant appealed.

Held:

[1] The essence of stakeholding in vendor and purchaser cases is that a binding contract of sale has been entered into and the intending purchaser deposits with a third party a sum to be held pending completion; meanwhile the third party holding that deposit may part with it to neither contracting party without the consent of the other and if competing demands arise he can interplead. (*Maloney v. Hardy* [1970] 216 EG 1582 at 1585 and *Sorrell v. Finch* [1977] AC 728 at 745 considered and applied).

[2] Issue document of title is only evidence that the person named therein is presently the registered owner of the interest in land.

[3] Having regard to the definition of "an issue document of title", such a document particularly one relating to a large piece of land which has yet to be sub-divided cannot be deposited and held as "stakeholder interpleader summons".

- a** [4] As the respondent was not holding the “issue document of title” as stakeholder it was not competent for him to take out a “stakeholder interpleader summons”.
- [5] On the facts of the case the respondent was holding the issue document of title merely as agent for the appellant.
- [*Appeal allowed with costs.*]
- b** **Cases referred to:**
Maloney v. Hardy [1970] 216 EG 1582
Sorrell v. Finch [1977] AC 728
- Legislation referred to:**
 National Land Code 1965, ss. 5, 281(1), 330(1)
- c** **Other source referred to:**
Jowitt, Dictionary of English Law, 2nd Edn.
- For the appellant - V. Muthusamy; M/s. V. Muthusamy & Co.*
For the respondent - V.S.Visvanathan; M/s. S.N. Leow & Co.
- d** [**Editor’s Note:** For the definition of “an issue document of title”, see s. 5 of the National Land Code 1965. For the definition of “stakeholder”, see *Jowitt’s Dictionary of English Law* (2nd Edn.).]

JUDGMENT

George Seah SCJ:

- e** This appeal raises a short but interesting point of law. According to the appellant:
- f** (a) In or about 1981 she retained the respondent to act for her in the purchase of a parcel of land situate in the Mukim of Bagan Tiang, Kerian, Perak, known as Lot No. 1811 comprised in state lease No. 1327 containing an area of 15 acres 2 roods 30 poles or there-about (hereinafter referred to as the said land). The transaction was successfully concluded by the registration of a memorandum of transfer of the said land at the Ipoh land office on 13 July 1982 *vide* Persn. No. 12791/82 Jilid No. 1542 Folio No. 88 in the name of the appellant and the issue document of title to the said land was duly delivered and received by the respondent;
- g** (b) On 14 July 1983 the appellant entered into a sale and purchase agreement of the said land with Messrs. Kurasani Sdn. Bhd. and the balance of the purchase price was paid by Kurasani on 12 September 1983. For the purpose of this land transaction the appellant retained Messrs. Lim Cheng Poh & Lim as her solicitors;
- h** (c) On 21 July 1983 the appellant instructed her solicitors to demand the return of the issue document of title to the said land from the respondent. A reminder was sent on 22 August 1983. On 13 September 1983 the appellant formally revoked the retainer and discharged the respondent and requested that the issue document of title be handed over to her solicitors. The respondent refused to comply with this demand.
- The respondent do not appear to dispute the above statements of the appellant but in defence state as follows:
- i** (i) That on 24 February 1982 the appellant executed a power of attorney in favour of her son, Gee Kuang Chin and that this Instrument was registered at Ipoh High Court on 19 March 1982 *vide* P/A No. 317/82. This power of attorney was subsequently cancelled by the appellant on 12 September 1983.

- (ii) That when Gee Kuang Chin was an attorney of the appellant it was alleged that he entered into a few sale and purchase agreements disposing of several portions of the said land. Gee Kuang Chin had denied signing these agreements which are now the subject of legal proceedings in the Court below.

a

When the respondent failed to hand over the issue document of title to the said land to the appellant or her solicitors and to resolve this impasse, an originating summons was taken out by the appellant for “an order that M/s. Toh Thiam Hock & Co., the former solicitors to the plaintiff do deliver to M/s. V. Muthusamy & Co., the solicitors for the plaintiff such documents of title relating to all that parcel of land situate in the Mukim of Bagan Tiang, Kerian, Perak, known as Lot No. 1811 comprised in state lease no. 1327 in the custody of power of the said M/s. Toh Thiam Hock & Co. and costs”.

b

The respondent then applied for an interpleader summons to be served on the various alleged purchasers of the portions of the said land (hereinafter referred to as the claimants) to appear and state the nature and particulars of their respective claims to the subject-matter of this action. It is clear from the opposing affidavits filed by the Claimants that after reciting the alleged sale and purchase agreements entered into with the appellant’s attorney in 1982 or thereabout they also rely on cl. 11 of the alleged agreements which reads:

c

Until such time when a proper representation is agreed to by all the other co-owners of the other various portions of the said land, the relevant title of the land shall be kept in the safe custody by M/s. Toh Thiam Hock & Co., advocates & solicitors of No. 16, Kota Road, Taiping who shall be the stakeholders thereof.

d

The learned Judge dismissed the originating summons after a hearing holding that “Until such time when the issue between the plaintiff and the purchasers are settled the defendants are in no position to release the title deed to anyone. They are in no position to hand over the title deed to the plaintiff either.”

e

The appellant was dissatisfied with this decision and had appealed to this Court.

The real issue before this Court was when the respondent received the issue document of title under clause 11 of the alleged agreements did he receive it as “stakeholder” or as agent for the appellant? If the respondent received it as “stakeholder” then he was right to take out a “stakeholder interpleader summons” in view of the rival claims made by the appellant as vendor and the various claimants as purchasers. On the other hand, if it were the latter then, in our opinion, the respondent was wrong to interplead after his agency and authority had been terminated by the appellant in 1983.

f

Now, what meaning is to be attributed to the word “stakeholders” in the context of cl. 11 of the alleged sale and purchase agreement?

g

“Jowitt’s *Dictionary of English Law* (2nd Edn.) defines “stakeholder” as person with whom money is deposited pending the decision of a bet or wager; a person who holds money or property which is claimed by rival claimants, but in which he himself claims no interests”. There is some confusion of terminology as to the meaning of “stakeholder”. “Stakeholder” is often used both by estate agents and the Courts to describe the status of an estate agent who accepts a deposit (a) in the course of negotiation or (b) after a contract has been concluded.

h

The essence of stakeholding in vendor and purchaser cases is that a binding contract of sale has been entered into and the intending purchaser deposits with a third party a sum to be held pending completion; meanwhile the third party holding that deposit may part with it

i

a to neither contracting party without the consent of the other, and if competing demands arise he can interplead (per Edmund-Davis LJ in *Maloney v. Hardy* [1970] 216 EG 1582 at 1585). This passage appears to have been approved in *Sorrell v. Finch* [1977] AC 728 at 745.

b Section 5 of the National Land Code 1965 defines “an issue document of title” to mean any document prepared for issue to the proprietor of any land (whether under this Act or under the provisions of any previous land law) being a copy of, or an extract from, the register document of title relating thereto. In other words, an “issue document of title” is only evidence that the person named therein is presently the registered owner of the interest in the land.

c We have not come across any case nor have we been able to find any binding authority which has ruled that an “issue document of title” under the Torrens system can be deposited and held “as stakeholder” in a sale and purchase agreement. Having regard to the definition of an “issue document of title” in s. 5 of the 1965 Act, as at present advised, we think that an “issue document of title” particularly one relating to a large parcel of land which has yet to be subdivided into individual housing lots, cannot be deposited and held “as stakeholder”. On the other hand, in our opinion, an “issue document of title” can be held and deposited within the limited purposes stated in s. 281(1) and s. 330(1) of the 1965 Act. As the respondent was not holding the “issue document of title” as stakeholder, we are of the opinion, that it was not competent for him to take out a “stakeholder interpleader summons”. On the facts of this case, we are of the opinion that the respondent was holding the “issue document of title” merely as agent for the appellant. Since the agency and authority of the respondent having been terminated in 1983, in our opinion, the Claimants were unable to prevent the respondent from complying with the demand of the appellant for the return of the “issue document of title” relating to State Lease No. 1327.

e For the above reasons, we allow the appeal with costs here and below. The deposits to be refunded to the appellant.

Also found at [1986] 2 CLJ 423

f

g

h

i